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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

US PATENT & TRADEMARK  
OFFICE

XAVIER MARZE

SERIAL NO: 09/180,477

: ART UNIT: 1616

FILED: FEBRUARY 5, 1999

: EXAMINER: LEVY, N.

FOR: PROTECTION AGAINST TERMITES

Commissioner for Patents and Trademarks  
Box 16  
Washington, D.C. 20231

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST-CLASS MAIL WITH SUFFICIENT POSTAGE IN AN ENVELOPE ADDRESSED TO: COMMISSIONER FOR PATENTS AND TRADEMARKS, BOX 16, WASHINGTON, D.C. 20231 ON THIS 8th DAY OF MAY, 2002.

BY: Barbara J. Melh

**REQUEST FOR REFUND UNDER 37 CFR 1.26**

Sir:

The applicants respectfully request that the \$1,628.00 filing fee for the Continued Prosecution Application (CPA) filed on August 27, 2001, concerning the above-identified patent application, be refunded in full and credited to the deposit account of the undersigned attorneys, Deposit Account No. 03-2775. The background facts and reasons for this Request are set forth below.

Statement of Facts and Reasons Supporting Request For Refund

The responsibility for the present application was transferred to the present attorneys by another law firm in June of 2001. In August of 2001, before the end of the six month statutory term for response to the office action dated February 28, 2001, applicants filed a request for a Continued Prosecution Application and a Petition for Extension of Time (three months) along with checks for the necessary filing fees (total of \$1,628.00) and extension fees (total of \$890.00) that were applicable at that time. Applicants believed that they were entitled to file such a Continued Prosecution Application since the filing date of the application was February 5, 1999, which is before the May 29, 2000 cutoff date under the new rules for filing Continued Prosecution Applications. However, through an oversight, the present attorneys were not aware that a Continued Prosecution Application of the present application had already been filed in October 2000 by the attorneys who were responsible for the application at that time, and that, therefore, applicants were no longer entitled to file a Continued Prosecution Application for the present application.

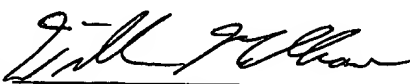
In late October of 2001, applicants received a Notice of Abandonment of the present application dated October 24, 2001. The Notice of Abandonment indicated that applicants had filed an improper Request for Continued Examination. Applicants contacted the Examiner about the Notice of Abandonment and advised the Examiner that they had never filed a Request for Continued Examination but instead had filed a Continued Prosecution Application. On October 31, 2001, applicants filed a Request for Reconsideration in response to the Notice of Improper Request for Continued Examination, setting forth the history of the case as applicants understood it at that time. On March 7, 2002, applicants filed a Status Request because there had been no response to their

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Should the Patent Office have any questions concerning this Request or the events surrounding the original payment of the filing fees for the CPA, the Office is invited to telephone the undersigned attorney.

Respectfully submitted,  
CONNOLLY BOVE LODGE AND HUTZ LLP

By: 

William E. McShane  
Registration No. 32,707  
Telephone: (302) 658-9141

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